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IP(83)418

PRESSE-MEDDELELSE • MITTEILUNG AN DIE PRESSE • PRESS-RELEASE • INFORMATION A LA PRESSE
ΑΝΑΚΟΙΝΩΣΗ ΓΙΑ ΤΟΝ ΤΥΠΟ • INFORMAZIONE ALLA STAMPA • MEDEDELING AAN DE PERS

Brussels, 1 December 1983

441.2(103)

COMMUNITY PROTESTS U.S. STATES' TAXATION POLICY

The European Community has protested on several occasions over the continued imposition of worldwide unitary taxation by a number of U.S. States on companies with Headquarters in Europe. The Community has now submitted its position on behalf of the Community and its 10 Member States to the U.S. Working Group on Unitary Taxation recently established by the President under the Chairmanship of U.S. Treasury Secretary, Donald Regan.

Many European multinational companies are suffering the effects of the operation of unitary taxation by a growing number of U.S. States and the European Community has a particular interest in ensuring that the strength of European feeling is brought home to the U.S. Working Group.

Under unitary taxation, as operated by certain U.S. States, subsidiaries of European multinational companies are taxed not on the normal "arm's length" or "separate" accounting basis which reflects the operating results of the subsidiary in a given jurisdiction, but on a proportion of worldwide group profits. This proportion is worked out through the application of a combination of payroll, property and sales figures in the State to the Company's worldwide figures.

The European Community views the operation of worldwide unitary taxation by U.S. States as running counter to the accepted principle of international taxation practice that an enterprise of one country carrying on business in another country should be taxed in the other country only on profits of activities carried on there.

Multinational companies centre their criticism on the inequitable and unfair consequences of the unitary system which involves:

(a) A strong risk of double taxation

This is inherent in the system. Part of the non-American profits which will have been taxed already in the home country of the enterprise, or wherever earned, are taxed again in the United States. The most glaring example of this inequity can arise where a subsidiary in a U.S. State returns a loss, according to normal "arm's length" accounting, but is nevertheless taxed on a proportion of worldwide group profits. This is the position in the Shell Petroleum N.V. v. Franchise Tax Board Case which is now before the U.S. Supreme Court. Shell's California subsidiary accumulated losses over a number of tax years amounting to $390 million but the Californian authorities, on applying the worldwide unitary basis apportioned to it taxable profits of $40 million for the same period.

(b) High Compliance Costs

State regulations place a massive burden on non-domestic corporations trading in the U.S. Such companies, with subsidiaries in the U.S., must produce accounts of their worldwide operations in the U.S. currency and in addition much non-financial information in the English language. For an enterprise with hundreds of subsidiaries worldwide the cost and effort expended in supplying this information, possibly to a number of States in different format, is a heavy administrative burden.

There are also strong fears that U.S. States not at present applying the unitary system may feel encouraged to adopt it following a recent Supreme Court decision, in favour of the Californian system (1). There is also a danger that other third countries may be attracted to the system by the prospect of increased revenue.

The unilateral extension of U.S. tax jurisdiction to foreign profits has serious consequences for non-U.S. enterprises. It is a serious impediment to international trade and investment, and disturbs the symmetry of international taxation relationships.

European Community members look to the Working Group now in session to take full and proper account of the representations now being made to it in framing any proposals to solve the present unsatisfactory situation.

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(1) Container Corporation of America v. Franchise Tax Board 103 S. Ct. 2933